

ASSEMBLY BILL

No. 90

Introduced by Assembly Member Swanson

January 6, 2011

An act to amend Section 236.1 of the Penal Code, relating to human trafficking.

LEGISLATIVE COUNSEL'S DIGEST

AB 90, as introduced, Swanson. Human trafficking: minors.

Existing law provides that any person who deprives or violates the personal liberty of another with the intent to effect or maintain certain felonies, or to obtain forced labor or services, is guilty of human trafficking.

This bill would additionally provide that a person who deprives or violates another person's liberty with the intent to effect or maintain the felony of making available to another person a person under 16 years of age for the purpose of any lewd or lascivious act, or the felony of the procurement of minors in the preparation of material depicting sexual conduct by a minor, is guilty of human trafficking.

This bill would also expand the scope of the offense of human trafficking to provide that any person who causes, induces, encourages, or persuades a person under 18 years of age to engage in a commercial sex act, as defined, with the intent to effect or maintain specified felonies, or who obtains forced labor or services from a minor, is guilty of human trafficking.

By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 236.1 of the Penal Code is amended to
 2 read:
 3 236.1. (a) ~~Any~~(1) *Except as provided in paragraph (2), any*
 4 *person who deprives or violates the personal liberty of another*
 5 *with the intent to effect or maintain a felony violation of Section*
 6 *266, 266h, 266i, 266j, 267, 311.3, 311.4, or 518, or to obtain forced*
 7 *labor or services, is guilty of human trafficking.*
 8 (2) *Any person who causes, induces, encourages, or persuades*
 9 *a person under 18 years of age to engage in a commercial sex act*
 10 *with the intent to effect or maintain a felony violation of Section*
 11 *266, 266h, 266i, 266j, 267, 311.3, 311.4, or 518, or who obtains*
 12 *forced labor or services from a minor, is guilty of human*
 13 *trafficking.*
 14 (3) *For purposes of this section, “commercial sex act” means*
 15 *any sexual conduct on account of which anything of value is given*
 16 *or received by any person.*
 17 (b) Except as provided in subdivision (c), a violation of this
 18 section is punishable by imprisonment in the state prison for three,
 19 four, or five years.
 20 (c) A violation of this section where the victim of the trafficking
 21 was under 18 years of age at the time of the commission of the
 22 offense is punishable by imprisonment in the state prison for four,
 23 six, or eight years.
 24 (d) (1) For purposes of this section, unlawful deprivation or
 25 violation of the personal liberty of another includes substantial
 26 and sustained restriction of another’s liberty accomplished through
 27 fraud, deceit, coercion, violence, duress, menace, or threat of
 28 unlawful injury to the victim or to another person, under
 29 circumstances where the person receiving or apprehending the

1 threat reasonably believes that it is likely that the person making
2 the threat would carry it out.

3 (2) Duress includes knowingly destroying, concealing,
4 removing, confiscating, or possessing any actual or purported
5 passport or immigration document of the victim.

6 (e) For purposes of this section, “forced labor or services” means
7 labor or services that are performed or provided by a person and
8 are obtained or maintained through force, fraud, or coercion, or
9 equivalent conduct that would reasonably overbear the will of the
10 person.

11 (f) The Legislature finds that the definition of human trafficking
12 in this section is equivalent to the federal definition of a severe
13 form of trafficking found in Section 7102(8) of Title 22 of the
14 United States Code.

15 (g) ~~(4)~~In addition to the penalty specified in subdivision (c),
16 any person who commits human trafficking involving a commercial
17 sex act where the victim of the human trafficking was under 18
18 years of age at the time of the commission of the offense shall be
19 punished by a fine of not more than one hundred thousand dollars
20 (\$100,000).

21 ~~(2) As used in this subdivision, “commercial sex act” means~~
22 ~~any sexual conduct on account of which anything of value is given~~
23 ~~or received by any person.~~

24 (h) Every fine imposed and collected pursuant to this section
25 shall be deposited in the Victim-Witness Assistance Fund to be
26 available for appropriation to fund services for victims of human
27 trafficking. At least 50 percent of the fines collected and deposited
28 pursuant to this section shall be granted to community-based
29 organizations that serve victims of human trafficking.

30 SEC. 2. No reimbursement is required by this act pursuant to
31 Section 6 of Article XIII B of the California Constitution because
32 the only costs that may be incurred by a local agency or school
33 district will be incurred because this act creates a new crime or
34 infraction, eliminates a crime or infraction, or changes the penalty
35 for a crime or infraction, within the meaning of Section 17556 of
36 the Government Code, or changes the definition of a crime within
37 the meaning of Section 6 of Article XIII B of the California
38 Constitution.

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